

SEP 28 2007

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

HARJIT SINGH,

Petitioner,

v.

PETER D. KEISLER,** Acting Attorney
General,

Respondent.

No. 06-73603

Agency No. A75-246-900

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted September 24, 2007 ***

Before: CANBY, TASHIMA and RAWLINSON, Circuit Judges.

Harjit Singh, a native and citizen of India, petitions for review of the Board

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

*** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

of Immigration Appeals’ (“BIA”) decision dismissing his appeal from an Immigration Judge’s (“IJ”) denial of his application for asylum and withholding of removal, and request for relief under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence an adverse credibility finding and will uphold the IJ’s and BIA’s decisions unless the evidence compels a contrary conclusion. *Malhi v. INS*, 336 F.3d 989, 992 (9th Cir. 2003). We deny the petition.

Substantial evidence supports the IJ’s and BIA’s denial of asylum based on an adverse credibility finding. Singh’ testimony was inconsistent with his asylum application and an FBI arrest report regarding whether he was in the United States or in India in 1993. *See Li v. Ashcroft*, 378 F.3d 959, 962-63 (9th Cir. 2004). His testimony was also inconsistent with his asylum application regarding whether he joined the Akali Dal Mann party on April 13, 1993, or April 13, 1994, after he left the United States. *See id.*

Because Singh failed to establish eligibility for asylum, he necessarily failed to meet the more stringent standard for withholding of removal. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Singh’s CAT claim also fails because it is based on the same testimony that the IJ and BIA found not credible, and Singh points to no other evidence that he

could claim the IJ and BIA should have considered. *See id.* at 1157.

Because Singh was not an asylee at the time he appeared before the IJ, he was not eligible for adjustment of status pursuant to 8 U.S.C. § 1159(b)(3). Accordingly, the IJ did not err in declining to adjudicate Singh's adjustment of status application.

PETITION FOR REVIEW DENIED.